UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,970	07/16/1999	JOHN R. DOUCEUR	1610	5820

7590   07/17/2003

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EXAMINER
NGUYEN, DUSTIN

ART UNIT	PAPER NUMBER
2154	

DATE MAILED: 07/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

	Application No.	Applicant(s)
Office Action Summary	09/354,970	DOUCEUR ET AL.
	Examiner	**Art Unit**	
	Dustin Nguyen	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *28 April 2003* .

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-44* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)   4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)   5) ☐ Notice of Informal Patent Application (PTO-152)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .   6) ☐ Other: .

DETAILED ACTION

1.   Claims 1 – 44 are presented for the examination.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1-5, 7-9, 11-14, 19, 20, 21, 24-27, 30-33, 35, 39, and 44 are rejected under 35

U.S.C. 103(a) as being unpatentable over Green et al. [US Patent No 5,949,762], in view of

Burns [US Patent No 6,098,090].

6.   As per claim 1, Green discloses the invention substantially as claimed including a

computer-readable medium having computer-executable instructions, comprising:

executing a background task [col 9, lines 59-61; and col 12, lines 57-59],

receiving data from a software component [col 6, lines 49-51] indicative of a measured

progress of the background task relative to the past performance data [col 10, lines 32-46].

Green does not specifically disclose

determining when to again execute the background task based on the data.

Burns discloses

determining when to again execute the background task based on the data [col 2, lines 5-19; and col 5, lines 17-21].

It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Green and Burns because Burns' teaching of execute the background task based on the data would eliminate task switching among background processes [Burns, col 1, lines 62-64].

7.   As per claim 2, Green discloses

suspending the background task for a suspend time [col 10, lines 14-27],

and authorizing the background task to again execute [503, 505, Figure 6a].

8.   As per claim 3, Green discloses determining when to again execute the background task includes comparing the measured progress of the background task against a target progress, the target progress based on data measured from previously running the background task [col 10, lines 28-46].

9.   As per claim 4, Green discloses determining when to again execute the background task includes determining a suspend time for suspending the background task [col 10, lines 17-27].

10.   As per claim 5, Green discloses if the measured progress with respect to the target progress is acceptable, setting the suspend time to a relatively low duration [col 11, lines 40-45].

11.   As per claim 7, Green discloses if the measured progress with respect to the target

progress is not acceptable, increasing the suspend time [col 10, lines 19-27].

12.   As per claim 8, Green discloses increasing the suspend time includes doubling a previous

suspend time [col 11, lines 57-58].

13.   As per claim 9, Burns discloses if the measured progress with respect to the target

progress is not determinable by present data, maintaining the suspend time [col 4, lines 50-62].

14.   As per claim 11, Burns discloses statistically combining the data received with previous

data [48, Figure 4].

15.   As per claim 12, it is rejected for similar reasons as stated above in claim 3. Furthermore,

Green discloses determining a target value indicative of a target amount of work [col 12, lines

15-24].

16.   As per claim 13, Green discloses using measure progress data to automatically calibrate

the target value [col 10, lines 46-53].

17.   As per claim 14, Green discloses the measured progress comprises an amount of work

performed per unit time [col 11, lines 62-64].

18.   As per claim 19, Green discloses the background task performs input/output operations

on a resource [col 7, lines 42-45].

19.   As per claim 20, Green discloses prioritizing an execution of at least one other task [col

10, lines 46-53].

20.   As per claim 21, it is rejected for similar reasons as stated above in claims 1.

21.   As per claims 24-27, they are rejected for similar reasons as stated above in claims 11-14.

22.   As per claims 30 and 31, they are rejected for similar reasons as stated above in claims 19

and 20.

23.   As per claim 32, it is method claimed of claims 1-3, it is rejected for similar reasons as

stated above in claims 1-3.

24.   As per claims 33, it is method claimed of claim 14, it is rejected for similar reason as

stated above in claim 14.

25.   As per claim 35, it is method claimed of claim 13, it is rejected for similar reason as

stated above in claim 13.

26.   As per claim 39, it is rejected for similar reasons as stated above in claim 32.

27.   As per claim 44, Burns discloses an indication of more information being needed [col 7, lines 29-34].

28.   Claims 6, 10, 15-18, 22, 23, 28, 29, 34, 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. [US Patent No 5,949,762], in view of Burns [US Patent No 6,098,090], and further in view of Schultz et al. [US Patent No 6,058,489].

29.   As per claim 6, Green and Burns do not specifically disclose setting the suspend time to a minimum value. Schultz discloses setting the suspend time to a minimum value [col 16, lines 58-63]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Green, Burns and Schultz because Schultz's teaching would allow the system to focus on more important task to increase system performance.

30.   As per claim 10, Schultz discloses determining a suspend time for suspending the background task, and wherein the suspend time is further based on a relative importance of the task [col 9, lines 49-57].

31.   As per claim 15, Green and Burns do not specifically disclose the background task is

executed for a limited time, and the data include a count of the operations performed during the

limited time. Schultz discloses the background task is executed for a limited time, and the data

include a count of the operations performed during the limited time [col 15, lines 47-52]. It

would have been obvious to a person skill in the art at the time the invention was made to

combine the teaching of Green. Burns and Schultz because Schultz's teaching would provide

priority execution for other important tasks.

32.   As per claim 16. Schultz discloses the data includes total real time taken for the

operations to complete [Abstract].

33.   As per claim 17, Schultz discloses a parameter representing the relative amount of work

performed by each operation [col 16, lines 53-65].

34.   As per claim 18, Schultz discloses the background task is part of a process for

recognizing duplicate files on a file system partition, and wherein the amount of work performed

by each operation is an amount of data read from the partition [col 2, lines 18-37].

35.   As per claims 22 and 23, they are rejected for similar reasons as stated above in claim 10.

36.   As per claim 28, it is rejected for similar reasons as stated above in claims 15 and 16.

37.   As per claim 29, it is rejected for similar reason as stated above in claim 17.

38.   As per claim 34, it is rejected for similar reason as stated above in claim 18.

39.   As per claims 36-38, they are rejected for similar reasons as stated above in claims 15-17, respectively.

40.   Claims 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. [US Patent No 5,949,762], in view of Burns [US Patent No 6,098,090], and further in view of Reznak [US Patent No 6,223,201].

41.   As per claim 40, Green and Burns do not specifically disclose receiving an indication of acceptable performance. Reznak discloses receiving an indication of acceptable performance [114. 116. 120, Figure 6]. It would have been obvious to a person skill in that art at the time the invention was made to combine the teaching of Green, Burns and Reznak because Reznak's teaching of receiving an indication would provide a method for regulating the processing time allocated to each of a plurality of concurrent tasks [Reznak, col 1, lines 58-60].

42.   As per claim 41, Reznak discloses receiving an indication of unacceptable performance [118, Figure 6].

43.   As per claims 42 and 43, they are rejected for similar reasons as stated above in claims 40 and 41, respectively.

44.   Applicant's arguments with respect to claims 1-44 have been considered but are moot in view of the new ground(s) of rejection.

45.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (703) 305-5321. The examiner can normally be reached on Monday – Friday (8:00 – 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (703) 308-9678.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directly to the receptionist whose telephone number is (703) 305-3900.

Dustin Nguyen

ZARNI MAUNG
PRIMARY EXAMINER